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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/095,536	06/10/1998	JOHN A. KINK	OPHD-03282	9749
23535	7590	11/25/2005	EXAMINER	
MEDLEN & CARROLL, LLP 101 HOWARD STREET SUITE 350 SAN FRANCISCO, CA 94105			MURPHY, JOSEPH F	
		ART UNIT	PAPER NUMBER	
		1646		

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/095,536	KINK, JOHN A.	
	Examiner	Art Unit	
	Joseph F. Murphy	1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-12, 15-18, 34-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 49-51 is/are allowed.
- 6) Claim(s) 7-12, 15-18 and 34-48 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Formal Matters

Claims 7-12, 15-18, 34-51 are pending and under consideration.

Response to Amendment

The rejection of claims 7, 9-10, 12 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,591,827 (Brakenhoff et al.) has been obviated by Applicant's amendment. However, the claims are rejected under 35 USC 112 first paragraph (see below), and this rejection will be reinstated upon deletion of the new matter.

The rejection of claims 7, 9-11, 12-18, 42, 44-48 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,591,827 (Brakenhoff et al.), in view of U.S. Patent No. 5,585,098 (Coleman et al.) has been obviated by Applicant's amendment. However, the claims are rejected under 35 USC 112 first paragraph (see below), and this rejection will be reinstated upon deletion of the new matter.

Claim Rejections - 35 USC § 112 first paragraph

Claims 7-12, 15-18, 34-48 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for the invention as now claimed: a method of treatment of a mammal having symptoms of sepsis by administration of a therapeutic preparation lacking a cytokine receptor antagonist, comprising anti-TNF-alpha and anti-IL6 antibodies.

Applicant's amendment, filed 9/8/2005, does not provide sufficient direction for the written description for the limitation lacking a cytokine receptor antagonist, of claims 7 and 42. The specification originally discloses the existence of an IL-1 receptor antagonist on page 3, lines 6-12 of the Specification. However, there is no disclosure of a therapeutic preparation lacking a cytokine receptor antagonist. The specification as filed does not provide a written description or set forth the metes and bounds of this phrase. The specification does not provide direction for the instant sequence encompassing the above-mentioned limitations as they are currently recited. The instant claims now recite limitations which were not clearly disclosed in the specification as-filed, and now change the scope of the instant disclosure as-filed. Such limitations recited in the present claims, which did not appear in the specification, as filed, introduce new concepts and violate the description requirement of the first paragraph of 35 U.S.C. 112.

Applicant is required to cancel the new matter in the response to this Office action Alternatively, applicant is invited to provide sufficient written support for the limitations indicated above.

Conclusion

Claims 49-51 are allowable.

Claims 7-12, 15-18, 34-48 are rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Murphy whose telephone number is (571) 272-0877. The examiner can normally be reached Monday through Friday from 7:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached on (571) 272-0829.

The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph F. Murphy, Ph. D.
Primary Examiner
Art Unit 1646
November 15, 2005


JOSEPH MURPHY
PATENT EXAMINER